

#### § 298.24

Vessel or Advanced or Modern Shipbuilding Technology, the proceeds of such Obligations shall be applied to the construction, reconstruction or reconditioning of other Vessels or Advanced or Modern Shipbuilding Technology or for facilities or equipment pertaining to marine operation (described in § 298.24 of this part). The Secretary may permit the refinancing of existing debt but only if any security lien on the Vessel(s) or Advanced or Modern Shipbuilding Technology is discharged immediately prior to the placing of any Mortgage thereon by the Secretary. The applicant shall satisfy all the eligibility requirements set forth in subpart B of this part, including economic soundness, as may be necessary. Refinancing of Title XI debt only shall be permitted for Advanced or Modern Shipbuilding Technology.

#### § 298.24 Financing facilities and equipment related to marine operations.

The Secretary may approve Guarantees secured by one or more Vessels and issued to finance the construction, reconstruction, or reconditioning of facilities or equipment pertaining to marine operations. Such facilities or equipment shall be of a specialized nature, used principally for servicing vessels and in handling waterborne cargo in the close proximity of the berthing area, excluding over-the-road equipment (other than chassis and containers), permanent or semipermanent structures and real estate.

#### § 298.25 Excess interest or other consideration.

The Secretary shall not execute Guarantees if any agreement in the Documentation directly or indirectly provides for:

(a) The payment to an Obligor of interest, or other compensation for services which have not been performed, in a manner that such compensation or payment is being provided as interest in excess of the rate approved by the Secretary; or

(b) Grants of security to an Obligor in addition to the Guarantees.

#### § 298.26 Lease payments.

If payment of principal and interest on Obligations would in any way be de-

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pendent upon the lease or charter hire payments for a Vessel or Advanced Shipbuilding Technology or Modern Shipbuilding Technology that is security for the Obligations, the amount and conditions of lease or charter payments shall be subject to the Secretary's approval.

#### § 298.27 Advances.

(a) *In general.* In accordance with the provisions of section 207 and Title XI of the Act, the Secretary shall have the discretion to make or commit to make an advance or payment of funds to, or on behalf of the owner, or operator or directly to any other person or entity for items, including, but not limited to, principal, interest, insurance and other vessel-related expenses or fees. Such advances or payments shall be made only to protect, preserve or improve the collateral held as security by the Secretary to secure Title XI debt. The applicant making the request for an advance shall demonstrate (with market and cash flow analysis and other projections) that its problems are of a short term duration (less than two years); with the help of an advance(s), the applicant would be assisted over its temporary difficulties; and there is adequate collateral for the advance.

(b) *Filing requirements.* Any company that desires to request an advance or other payment, or a commitment to make an advance or other payment from the Secretary for the purposes stated in § 298.27 of this part, shall apply for such assistance as far in advance as is reasonably possible. A request for an advance for principal and interest payments shall be received by the Secretary at least 30 days prior to the initial payment date. A request for an advance of insurance payments shall be received by the Secretary at least 30 days prior to a renewal or termination date. The Secretary may consider requests for assistance with less notice, upon written documentation of extenuating circumstances. Any requests for assistance must be accompanied by supporting data with respect to the need for the advance, that financing assistance has been sought from other sources, that the company

is taking and has taken measures to alleviate its situation, financial projections, proposed term of the repayment, current and projected market conditions, information on other available collateral, liens and other creditor information, and any other information which may be requested by the Secretary.

### Subpart D—Documentation

#### § 298.30 Nature and content of Obligations.

An Obligation, whether issued in the form of a note, bond of any type, or other debt instrument, when engraved, printed or lithographed on a single sheet of paper shall include on its face the name of the Obligor, the principal sum, the rate of interest, the date of maturity, and the Guarantee of the United States, authenticated by the Indenture Trustee. If the Obligation is typewritten, printed or reproduced by other means on several pages of paper, the Guarantee of the United States and the authentication certificate of the Indenture Trustee may appear at the end of the typewritten Obligation. The instrument which is evidence of indebtedness shall also contain all information necessary to apprise the Obligees of their rights and responsibilities with respect thereto, including, but not limited to, time and manner for payment of principal and interest, redemptions, default procedure and notification (in case of registered Obligations) of sale or other transfer of the instruments.

#### § 298.31 Mortgage.

(a) *In general.* (1) Under normal circumstances, a Guarantee shall not be endorsed on any Obligation until the Secretary receives satisfactory evidence of a Mortgage in one or more Vessels or a Mortgage or other security interest in the Advanced Shipbuilding Technology or Modern Shipbuilding Technology (the "Technologies"), in favor of the Secretary. During construction of a new Vessel or any of the Technologies, a security interest may be perfected by a filing under the Uniform Commercial Code.

(2) In order to ensure that the Secretary's Mortgages or other security interests are valid and enforceable, the

Secretary shall require that the Obligor obtain legal opinions, in form and substance satisfactory to the Secretary, from independent, outside legal counsel satisfactory to the Secretary, including foreign independent outside legal Counsel with respect to Eligible Export Vessels, which opinions shall state, among other things, that the Mortgage or other security interest(s) are valid and enforceable:

(i) In the country in which the Vessel is documented (or, in the case of a security interest, in jurisdictions acceptable to the Secretary);

(ii) In the United States; and

(iii) For vessels operating on specified trade routes, in the country or countries involved in this service, unless the Secretary determines that those destinations are too numerous, in which case, the Secretary will instead require an opinion of foreign validity and enforceability in the Vessel's primary port of operation.

(3) In the case where a Mortgage or security interest on the financed assets may not be available or enforceable, the Secretary shall require alternative forms of security.

(4) The Security Agreement shall provide that upon delivery of a new Vessel or upon final installation of the Technologies, or at the time Guarantees are issued with respect to an existing Vessel or the Technologies, a Mortgage on the Vessel and a Mortgage or other security interest on the Technologies shall be executed in favor of the Secretary, unless the Secretary determines that a Mortgage or a security interest is not required in accordance with the preceding sentence.

(5) The Mortgage shall be filed with the United States Coast Guard at the Vessel's port of record, or with the proper foreign authorities with respect to an Eligible Export Vessel, and with respect to assets of a General Shipyard Facility a Mortgage and security interest shall be filed with the proper authorities within the appropriate state and shall be delivered to the Secretary after being recorded.

(b) *Mortgage secured by multiple Vessels.* When two or more Vessels are to be security for Guarantees, the Security Agreement may provide that one Mortgage relating to all the Vessels